

CITY OF MUSKEGON
ZONING BOARD OF APPEALS
REGULAR MEETING
MINUTES

August 14, 2013

Chairman R. Hilt called the meeting to order at 4:00 p.m. and roll was taken.

MEMBERS PRESENT: R. Hilt, S. Warmington, B. Larson, W. German Jr., S. Brock,
T. Halterman

MEMBERS ABSENT: E. Fordham

STAFF PRESENT: M. Franzak, D. Renkenberger

OTHERS PRESENT: T. Weatherbee, 1747 Edgewater; E. Carter, 1741 Edgewater; G. Nolan, 2221 Riordan; G. Borgman, 228 Houston; L. Spataro, 1567 5th; N. Simonson, 461 W. Webster; O. Bailey, City of Muskegon Community & Neighborhood Services Dept; B. Wright, 452 W. Webster; Dr. Abiade, 1946 LeTart; M. Burt, 846 Stevens; G. DeCamp, 475 W. Webster; J. EldenBrady, 1336 Spring; J. Bass, 380 Catawba

APPROVAL OF MINUTES

A motion that the minutes of the regular meeting of April 9, 2013 be approved was made by B. Larson, supported by S. Warmington and unanimously approved.

PUBLIC HEARINGS

Hearing; Case 2013-02: Request for a variance from Section 404, Zoning and Bulk Requirements, of the zoning ordinance to construct a new home with a rear setback of less than 30 feet and a height of over 35 feet at 1747 Edgewater Street, by Thomas Weatherbee. M. Franzak presented the staff report. The applicant will be constructing a new home on the vacant lot at 1747 Edgewater Street. The property is zoned R-1, Single Family Residential and measures 83 x 100 feet. The applicant would like to line the front of the building up with the surrounding houses; however, he would not be able to meet the minimum rear setback of 30 feet if he does. The applicant is seeking a variance for the house to be constructed as close as 16 feet from the rear property line. The surrounding houses do not meet the rear setbacks either, which makes them legally non-conforming. The applicant would also like to construct an observation look-out as shown on the drawings provided, and is seeking a variance from the height restriction of 35 feet for an additional 7 feet, 2 inches. To the rear of the subject property is a vacant 76-acre parcel owned by Sand Products Corp. Notice was given to property owners within 300 feet of this property. Thomas & Joyce Voyt, 1760 Edgewater Street, are in favor of the variance.

T. Weatherbee explained his project and provided additional photos of the area and the views from his property. W. German asked how many square feet the house would be. T. Weatherbee stated that it would be around 3,600 square feet. B. Larson stated that many lots in the Bluffton area of town were non-conforming, and it was not uncommon for property owners to have to

come before the Zoning Board of Appeals. Board members concurred that the requested improvements should not negatively affect the neighbors, especially since there was a very large vacant parcel behind this site.

A motion to close the public hearing was made by S. Brock, supported by B. Larson and unanimously approved.

The following findings of fact were offered: a) that there are exceptional or extraordinary circumstances or conditions applying to the property in question or to the intended use of the property that do not apply generally to other properties or class of uses in the same zoning district, b) that such dimensional variance is necessary for the preservation and enjoyment of a substantial property right possessed by other properties in the same zoning district and in the vicinity, c) that the authorizing of such dimensional variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this chapter or the public interest, d) that the alleged difficulty is caused by the Ordinance and has not been created by any person presently having an interest in the property, or by any previous owner, e) that the alleged difficulty is not founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner, and f) that the requested variance is the minimum action required to eliminate the difficulty.

A motion that the findings of fact as determined by the Zoning Board of Appeals be adopted and that the variance request to allow a rear setback of no less than 14 feet and a height of no more than 42 feet, 2 inches at 1747 Edgewater Street be approved, subject to the conditions that 1) the additions to the property must be complete within one year (Sec. 2504) or the variance is void, and 2) the variance is recorded with the deed to keep record of it in the future, was made by B. Larson, supported by W. German and unanimously approved.

Board member B. Larson asked if there were any objections to hearing the next two cases out of order, with the board hearing case 2013-04 next, since he anticipated case 2013-03 being lengthy. No objections were voiced and case 2013-04 was heard next.

Hearing; Case 2013-04: Request for a use variance from Section 400, Principal Uses Permitted, of the Zoning Ordinance to allow a two-unit home in an R-1, Single Family Residential district at 1133 6th Street. M. Franzak presented the staff report. The house at 1133 6th Street is zoned R-1, Single Family Residential. The applicant would like to convert the house into a two-unit home, which is not allowed in R-1 districts. The applicant has stated this was previously a two-unit home, but there are no city records showing that it was ever registered as such. A letter from the City's Code Coordinator was provided, showing the inspection history at this address. The applicant had applied for funding from the City of Muskegon's Rental Rehab Program through the Community and Neighborhood Services Department, to make repairs and improvements to the home. However, if the home is only allowed to house a single family, the funding amount would be reduced and not sufficient to cover the repairs. Several residents responded to the notification letters and all were opposed to the request. Elizabeth Sherman, 570 W. Clay Avenue, resident of Renaissance Place, was opposed due to the limited parking in the area. Lavonne Kennedy, 570 W. Clay Avenue, resident of Renaissance Place, was opposed due to the limited parking in the area. She said that Clay Avenue is narrow and there is only parking allowed on one side of the street. Also, visitors to the Hackley & Hume homes often park on 6th Street, especially in the busier summer months. Bruce Stanton, 207 Fulton Street, a landlord in the area, is also opposed because of parking. Nancy Williams, the manager Renaissance Place at 570 W. Clay Avenue and representative for the owners, Brookstone Capital, called to say they are

opposed to the request. She said parking in that area is scarce, and this house has a very small driveway – barely big enough for 1 car, let alone a 2-family home. Museums are located in that area too, and need on-street parking. She feels this would be an additional burden for the places already there that utilize on-street parking – including Renaissance Place, the museums, and current residences. In addition, the house right next door is a 3-unit, and there is not enough space in that small area for 5 families.

S. Brock asked if the house was set up as a two-unit right now. M. Franzak stated that it was not, and had never legally been, according to City records going back to the 1950's. In addition, it had been vacant over two years. G. Nolan stated that it had always been a two-family home with two kitchens and two bathrooms, up until the last tenant moved out in 2001. She said she had assumed that she could continue the two-family use once she was ready to make the repairs and get the home re-occupied. R. Hilt explained the R-1 zoning requirements. W. German asked if the home was livable as it was now. G. Nolan stated that it was not. She was working with the City and State to obtain grants to do rehab work. W. German asked what was done with this type of situation in the past. M. Franzak explained grandfathered rights, and how they expired after two years of vacancy. G. Borgman owned two houses in the downtown area that he had converted from multi- to single-family. He stated his opposition to the request and asked the ZBA to keep this a single-family home. L. Spataro was a member of the Nelson Neighborhood Improvement Association (NNIA) board and a city commissioner. He was opposed to the request and stated that the neighborhood association and city commission had both worked hard over the years to stabilize this neighborhood and get multi-family homes back to single family use. He also stated that the multi-family use would cause parking issues. N. Simonson recently purchased a home in the area and stated that he preferred that this property retain its single family status. O. Bailey worked for the City of Muskegon Community & Neighborhood Services office. She had been working with Ms. Nolan to obtain grant funds to rehab this house, and was not aware until recently that the two-unit use was not allowed. She stated that the side yard could be used for parking, as well as on-street parking. She stated that Ms. Nolan would not be eligible for the same amount of grant funds if the house were a single unit. R. Hilt stated that the house had been out of compliance for 12 years, which was the issue the board had to deal with. G. Nolan stated that she had made a point to keep up the taxes on the property over the years, since she believed she would be able to have a two-unit home when the time came to fix it up and rent it. B. Wright was a board member of the NNIA and the Heritage Village Committee and was opposed to the request. He stated they had worked very hard to deal with the problems of inner-city living and the number of rental properties was an issue. He asked the ZBA to keep this a single family home. Dr. Abiade stated that he understood the necessity of a zoning ordinance, but asked the board to find ways to encourage the residents who were trying to improve their properties. M. Burt was in favor of the request. She had been working with Ms. Nolan and stated that this would be a very nice house when it was fixed up. S. Warmington asked if anyone lived there at this time. G. Nolan stated no. S. Warmington stated that if the house had been properly registered as a rental property, notices would have been sent to the owner annually, making them aware of the zoning regulations. He stated that the City Commission had put a lot of thought into the issue of multi-family properties, and their consensus as well as input from the residents was a desire to get homes back to single family uses. G. DeCamp of 75 W. Webster stated that he was strongly opposed to the request.

A motion to close the public hearing was made by B. Larson, supported by S. Warmington and unanimously approved.

The following findings of fact were offered: The property can be used (put to a reasonable use) for the purposes permitted in that zoning district; The property is not unique compared to other properties in the area; The proposed use would alter the essential character of the area and would negatively affect the neighbors and/or the public; The alleged hardship was created by the property owner and not the ordinance; The alleged hardship is founded solely upon the opportunity to make the property more profitable or to reduce expense to the owner.

A motion that the findings of fact determined by the Zoning Board of Appeals be adopted and that the variance request to allow a two-unit home in an R-1, Single Family Residential district at 1133 6th Street be denied based on the findings of fact, was made by S. Warmington, supported by B. Larson and approved, with W. German and T. Halterman voting nay.

Hearing; Case 2013-03: Request for a zoning appeal and to be granted a business registration to operate a farm at 1192 Ambrosia Street, 381 Catherine Avenue, 383 Catherine Avenue, 370 McLaughlin Avenue, 1272 Spring Street, 1336 Spring Street, 1192 Wood Street and also to operate a market at 1198 Wood Street, by Joshua & Anna EldenBrady. M. Franzak presented the staff report. The applicants had applied for a business registration with the City Clerk's Office for "Patchwork Pastures Urban Farm & Wood Street Market." The application stated they would "grow produce at 1272 Spring, 381 Catherine, 383 Catherine, 1192 Ambrosia and 370 McLaughlin and 1192 Wood. They will sell the produce only at 1198 Wood and only have a set-up of table and possibly tent at time of sales. The main office will be at 1336 Spring which is their residence. They may possibly grow produce at 1198 Wood and 1336 Spring also." The application for a business license was denied because farming is not allowed in the city. The City does allow community gardens, but not commercial farming. The zoning appeal filed by the applicants is a result of the Zoning Administrator's denial of the business license. There are multiple zoning districts involved in this request: Properties at 370 McLaughlin, 1272 Spring and 1336 Spring are zoned R-1, Single Family Residential; properties at 1192 Ambrosia and 381 Catherine are zoned RT, Two Family Residential; and properties at 383 Catherine, 1192 Wood and 1198 Wood are zoned B-1, Limited Business District. Farming is not an allowed use in any zoning district in the city. The applicants claim that the Community Garden ordinance allows for commercial farming.

M. Franzak stated that the applicants had purchased some of these lots from the City, and at that time was told that farming was not an allowed use in the City. S. Brock asked if that was put in writing. M. Franzak stated that it was conveyed verbally. J. EldenBrady stated that the farming operation would not be much different than what was currently there; the only change would be that they would be selling the produce. He described his plans for each property and argued that the community garden ordinance allowed the requested uses. Staff disagreed. S. Brock asked J. EldenBrady if he would have cows on the property at some point. J. EldenBrady stated that he was not sure, but if a condition of approval was that he could not have animals, he would comply with that, although he didn't think it was proper. M. Franzak stated that a produce stand would be allowed in the B-1 district if the City allowed urban farming, but it didn't. He also stated that the EldenBradys currently had 4 goats on the property in violation of City ordinance. J. EldenBrady cited several state and case laws in his arguments. S. Warmington stated that J. EldenBrady had the right to state his case; however, he was not comfortable making a decision since he was not familiar with the laws cited. B. Larson suggested getting an opinion from the City Attorney. J. EldenBrady asked that the board deny the request rather than table it, if they had already made up their minds. W. German concurred with S. Warmington that the board needed more information on the legalities of the proposal.

J. Bass lived next to one of the properties and stated that he was opposed to the request. He could hear the goats from his porch and stated that it was a nuisance. He had lived there since the 1970's.

A motion to close the public hearing was made by B. Larson, supported by W. German and unanimously approved.

R. Hilt stated that he had concerns regarding the proposal, but he would like more information from the City on the basis for their decision before he felt comfortable voting on the issue.

A motion to table this case to enable the board to get a legal opinion from the city attorney was made by B. Larson, supported by S. Warmington and unanimously approved.

S. Warmington asked M. Franzak to find out a time frame from the city attorney for getting the information and let Mr. EldenBrady know.

OLD BUSINESS

None

OTHER

None

There being no further business, the meeting was adjourned at 5:20 p.m.